THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 27004 OF 2003
AND
CONTEMPT CASE NO. 1385 of 2005

W.P.NO. 27004 OF 2003

Between:

M. Prasada Rao and 4 others.

... Petitioners

and

The State of A.P. rep.,by its Secretary, Education Department, Secretariat Buildings, Hyderabad and 6 others.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 27004 OF 2003
AND
CONTEMPT CASE NO. 1385 of 2005

ORDER:

W.P.No. 27004 of 2003 is filed seeking a declaration that the order of the 3rd respondent is arbitrary, discriminatory and illegal and for a consequential direction to the respondents to approve appointment of the petitioners as secondary grade teachers, from the date of their selection, and for payment of monetary benefits.

This Court, by order in W.P.M.P.No. 34201 of 2003 in W.P.No. 27004 of 2003 dated 29.12.2003, directed the respondents to pay salaries to the petitioners, as per their eligibility, if they were working in aided vacancies. Alleging wilful and deliberate violation of the orders passed by this Court, in W.P.M.P.No. 34201 of 2003 in W.P.No. 27004 of 2003 dated 29.12.2003, C.C. No. 1385 of 2005 was filed. Both the writ petition and the contempt case were heard together and are now disposed of by a common order.

Brief facts, to the extent necessary, are that the petitioners, (five in number), are working as Secondary Grade teachers in respondent 4 to 7 schools respectively. The 3rd respondent granted permission to the respondents' school to fill up vacancies,

in the posts of aided secondary grade teachers, as per the rules notified in G.O.Ms. No. 1, Education Department dated 01.01.1994, vide proceedings dated 29.11.1996. The respondent schools advertised in the Newspapers, on 03.12.1996, inviting applications from qualified candidates. The petitioners applied pursuant to the said advertisement. The 4th respondent school is said to have constituted a selection committee and to have conducted a recruitment test on 18.02.1997 wherein the 1st and 2nd petitioners were selected. According to the petitioners, the selection list was sent for approval, to the 3rd respondent, through the Mandal Education Officer, Kurapam. The 4th respondent asked the petitioners to join duty, pending approval of their selection by the competent authority and, on the petitioners expressing their willingness, appointment order dated 21.02.1997 was issued in their favour. The 5th respondent school is said to have conducted a recruitment test on 10.02.1997 wherein the 3rd petitioner was selected, by the selection committee, on the basis of his merit. As the post was vacant and the need, for providing primary and secondary school education to the tribal children, immediate, the respondent school managements are said to have sent the selection list for approval to the 3rd respondent, through the Mandal Educational Officer, Kurupam. The 3rd petitioner, on being requested to join duty subject to approval, joined duty, pursuant to appointment orders being issued in proceedings in R.C. No. 4 of 1997 dated 15.02.1997, on 18.02.1997. Similarly the 6th respondent is said to have conducted recruitment, according to the 1993 Rules, on 18.02.1997. The Selection Committee selected

the 4th petitioner and the 6th respondent issued appointment orders dated 20.02.1997 subject to the approval of the 3rd respondent. Accordingly the 4th petitioner joined duty on 26.02.1997. The selection list was sent for approval, of the 3rd respondent, through the mandal educational officer, Kurupam. The 7th respondent school also constituted a selection committee as per the 1993 Recruitment Rules wherein the 5th petitioner was selected by the Selection Committee on 15.02.1997. The school management is said to have sent the selection list, for approval of the 3rd respondent, through the Mandal Educational Officer, Kurupam. Pending approval, the 7th respondent issued appointment orders to the 5th petitioner, vide proceedings dated 20.02.1997, pursuant to which the 5th respondent joined duty on 23.02.1997.

Petitioners would state that as there was inordinate delay in granting approval, they had persuaded the school management to seek approval of their appointment and to obtain sanction for payment of their salaries. The respondent schools managements sent reminders seeking approval of the appointments made by them. The 3rd respondent passed orders on 03.04.2002 stating that, vide letter dated 28.03.2001, they had already instructed all the managements to stop selections. Petitioners would contend that they were selected by the selection committee in February 1997 and were appointed subject to approval, that the order dated 03.04.2002 of the 3rd respondent was inconsistent with the permission given by him earlier. Petitioners had challenged the earlier order, of the 3rd respondent dated 03.04.2002, in several

writ petitions, and this Court set aside the order in W.P.No. 6332 of 2003 dated 10.04.2003 and remitted the matter back to the 3rd respondent for fresh consideration. The judgment in W.P.No. 6332 of 2003 dated 10.04.2003 was followed in W.P.No. 6733 of 2003, 6735 of 2003 and 6771 of 2003. Consequent thereupon the 3rd respondent passed the impugned order dated 16.06.2003 holding that, since the management had not followed the rules and regulations and the correct selection procedure as per G.O.Ms.No. 1 dated 01.01.1994 and had appointed teachers at their own wish and will, the department was not responsible for the irregular selection of these teachers in aided institutions. Petitioners would submit that the impugned order dated 16.06.2003 is inconsistent with the statutory rules i.e., A.P. Educational Institutions (Establishment, Recognition, Administration and control of schools under private Management) Rules, 1993 more particularly Rule 12 thereof which relates to recruitment of staff. According to the petitioners since the 3rd respondent gave permission to fill up the vacant aided secondary grade teacher posts, the school managements had constituted staff selection committees and had informed the same to the 3rd respondent, a recruitment notification was issued on 03.12.1996, pursuant to the permission given on 29.11.1996, that on both the dates of grant of permission and the notification, 33% reservation in favour of women was not required to be provided. Petitioners would submit that, in any event, the requirement of providing 33% reservation for women would not apply as only one post each was filled up in the respondent schools, except in the 4th respondent school, where two posts were filled up. With regards the other objection that the official

nominee did not participate in the selection process, petitioners would submit that Rule 12(5) provides that the selection shall not be vitiated only on the ground that the official nominee was not present in the selection committee. Petitioners would deny that the 3rd respondent was not informed about the selection. Petitioners would submit that proposals were sent through proper channel and that the Mandal Educational Officer was periodically affixing his signature in the visitors book. Petitioners would submit that the objection, that appointment should be made only after grant of approval, is without basis. According to the petitioners, the impugned order was passed without application of mind and in violation of the rules. Petitioners would contend that they have been working in aided posts since February 1997, the Management was not making any effort to obtain sanction for payment of their salaries on the plea that the appointments were subject to approval of the 3rd respondent, resulting in their being forced to live in penury. According to the petitioners, since the respondent schools management had followed the rules in appointing them it was not open to the 3rd respondent to shift its stand each time and to reject grant of approval of their appointment. Petitioners would submit that they are fully qualified to be appointed to the posts of secondary grade teachers and that they have been discharging their duties to the utmost satisfaction of the authorities since 1997.

In the counter-affidavit, filed on behalf of respondents 1 to 3, the 3rd respondent would state that the respondents 4 to 7 schools had failed to follow the procedure prescribed under Rule 12, of the rules notified in G.O.Ms.No. 1 dated 01.01.1994, as

directed by the District educational officer vide proceedings dated 29.11.1996 wherein it was made clear that reservation of 33.33% had to be followed by the Management. Respondents would submit that the school managements had also failed to follow the communal roster, as contemplated under Rule 12(6), and the petitioners were therefore not entitled to the relief sought for in the writ petition. According to the 3rd respondent, the petitioners were appointed by the school managements without following the procedure prescribed under Rule 12, more particularly sub-Rule 5 thereof, as notified in G.O.Ms.No. 1 dated 01.01.1994. It is contended that aided institutions, while constituting selection committees, must include a nominee of the District Educational Officer, as one of the members. However the management of respondents 4 to 7 schools had failed to follow the said rules and had neither intimated nor requested the departmental nominee to attend the selection process. The school management had also failed to comply with the rules of reservation though they were so directed in proceedings dated 29.11.1996. According to the 3rd respondent, though respondents 4 to 7 did not take any steps to constitute a staff selection committee in accordance with Rule 12, of G.O.Ms. No.1, they had submitted proposals six years thereafter on 24.03.2002, 26.03.2002, 01.03.2002 and 01.03.2002 respectively seeking approval of the appointments, made in violation of the rules, earlier. The 3rd respondent would state that according to Rule 12(8), the managements were required to communicate the list of selected candidates within 30 days from the date of completion of the selection process whereas in the instant case the same was intimated after a lapse of nearly six

years, that too without following the selection procedure. The 3rd respondent would refer to rule 12(8) which requires appointments made, in aided or un-aided vacancies, to be approved by the competent authority, and submit that, in the instant case, no such approval could be granted by the competent authority as the managements had failed to follow the rules while selecting the petitioners herein. Reference is made to the order of this Court, in W.P.No. 6771 of 2003 and batch, wherein the earlier orders issued by the respondents on 03.04.2002 was set aside and the matter remanded to the 3rd respondent, (District Educational Officer, Vizainagaram), for fresh consideration duly taking into account the relevant facts. The 3rd respondent was directed, by order dated 10.04.2003, to pass appropriate orders within four weeks from the date of receipt of the order. It is stated that, pursuant to the orders of this Court, the District Educational Officer, Vizianagaram had examined the case in detail and had passed the impugned proceedings dated 16.06.2003, which was also communicated to the petitioners herein.

In the counter-affidavit, filed on behalf of respondents 4 to 7, it is stated that the petitioners had been working as Secondary Grade Teachers in respondents 4 to 7 schools since February 1997, that respondents 4 to 7 are aided schools established to impart free education to children in tribal villages, that the District Educational Officer, by common order dated 29.11.1996, had granted them permission to make recruitment to vacant aided secondary grade teachers posts and, consequent thereto, respondents 4 to 7 had advertised the vacancies in the Newspapers and had addressed the District Employment

Exchange, Vizianagaram to sponsor eligible candidates. After receipt of the list from the District Employment Exchange and other applications from other individuals, the respondent schools had constituted their respective staff selection committees, as per Rule 13 of the G.O.Ms. No. 1, and had requested the 3rd respondent to send his nominee to participate in the selection process. Despite their request the 3rd respondent did not send his nominee on the scheduled date. Respondents 4 to 7 would state that their schools are situated in interior tribal areas and that all the school children are tribals. Among the two sanctioned posts in the 4th respondent school, both are said to be vacant since 1993. One among the three posts in the 5th respondent school is stated to have been vacant since 01.07.1994. The single post in the 6th respondent school is said to be vacant from June 1994, and the post in the 7th respondent school was vacant since 01.07.1992. Since the 3rd respondent had not granted permission, despite a long lapse of time, the respondent school managements felt the dire-necessity to fill up the post and as such proceeded with the selection process, despite the absence of the official nominee, and selected the petitioners on the basis of merit from among the candidates who appeared for the selection. It is stated that all the respondent schools are located in interior tribal areas unconnected by roads, the number of houses in all the villages is less than 50, that no woman candidate had submitted any application pursuant to the notification and even the woman candidates, who were sponsored by the District Employment Exchange, did not attend the recruitment test. Respondents 4 to 7 would state that the recruitment process took place prior to the amendment to Rule-22,

of the A.P. State & Subordinate Service Rules, vide G.O.Ms.No. 65, dated 15.02.1997. According to respondents 4 to 7, they had sent the appointment orders of the petitioners for approval of the 3rd respondent as per Rule 12 and had also requested the petitioners to join duty subject to approval of their selections. Respondents 4 to 7 would state that the petitioners have been working in their schools, that the respondent school managements were running schools in tribal areas without collecting any fee and that, unless the government released salaries, they were not in a position to pay salaries to the teachers. It is stated that the services of these teachers are completely utilized in the schools for tribal children and, but for the appointments made in 1997, all the schools would have been closed for want of teachers. It is stated that the Mandal Educational Officer used to make regular visits to the schools and had taken note of the services of the petitioners in the respective schools and was well aware that they had been pursuing with the authorities to approve the appointments and release salaries. Respondents 4 to 7 would state that, to their utter surprise, the 3rd respondent had passed the order dated 03.04.2002 rejecting approval on the ground that they had earlier informed the respondent schools, vide proceedings dated 23.03.2001, to stop selections when in fact they had completed the selection in February 1997 itself and had submitted proposals for approval immediately thereafter. According to the respondents, a plain reading of the proceedings dated 23.03.2001 would show that it was addressed to other schools who had sought permission in the year 2000. Respondent 4 to 7 schools would submit that the said order dated 23.03.2001

was quashed by this Court, that appointment of the petitioners was made in accordance with the procedure prescribed in G.O.Ms.No. 1 dated 01.01.1994, that the petitioners were informed in the appointment order itself that they would be paid salaries only after grant-in-aid was released and that they were constrained to proceed with the recruitment, without the official nominee, in view of their dire-necessities and because of the indifferent attitude of the authorities to extend educational support in tribal areas where there were no government schools. According to respondents 4 to 7, if they had not proceeded with the selection process there would have been no literacy among the tribal children, during the period 1997-2004, and since there were no government schools or other schools within a radius of 3 – 5 kilometres, recognition of their schools would also have been withdrawn. Respondents 4 to 7 would contend that absence of the official nominee is no impediment, for staff selection, in view of rule 10(5) since they had given sufficient notice to the authorities about the date of recruitment. Respondents would refer to rule 15 to 18 of G.O.Ms. No. 1 and state that since the schools are in the agency areas and tribal children cannot pay school fees, it is the duty of the State to impart them free education and that the respondents were not liable to pay salaries to the teachers.

In their affidavit, filed in reply to the counter-affidavit filed by the respondents 1 to 3, the petitioners would refer to the inconsistent stand of the official respondents. While in the earlier proceedings dated 03.04.2002 it was stated that selections were directed to be stopped by order dated 28.03.2001, consequent upon the proceedings dated 03.04.2002 being set aside by this Court, the official respondents were now taking a different stand.

With regards failure to provide reservation in favour of women, petitioners would state that, as respondents 4 to 7 schools were situated in interior tribal areas, there were no bus facilities or pucca houses and each village consisted of just 30 to 40 huts, no woman candidate had appeared for the recruitment. It is stated that amendment to the roster, under Rule 22 of the A.P. State and Subordinate Service Rules, was issued vide G.O.Ms.No. 65, dated 15.02.1997 whereas the recruitment process had started in November 1996 itself and was completed on 18.02.1997, 10.02.1997, 18.02.1997, 10.02.1997 and 15.07.1997 respectively. Petitioners would also state that since Rule 22 provides for carry forward of these vacancies, the future vacancies can be filled up by women candidates. With regards constitution of the selection committees, petitioners would state that the school managements had constituted a staff selection committee as per Rule12 and had addressed the 3rd respondent competent authority, to send his nominee, more than three weeks in advance. Petitioners would refer to Rule 12(5) and Rule 13 to submit that the selection process would not be vitiated even if there was no quorum in the selection committee. Petitioners would state that since the respondents had not taken any objection as contemplated under Rule 12(5), the plea that the official nominee was not invited, was unsustainable. Petitioners would refer to the fact that immediately after selection, the school managements had sent proposals, to the 3rd respondent, through the Mandal Educational Officer, Kurupam. However the proposals were neither rejected nor admitted till 03.04.2002. Petitioners would state that their working in the respective posts was noted in the visitors books by the

Mandal Educational Officer, the attendance registers were also counter-signed by him and hence the contention that proposals were not sent to the competent authority was incorrect. Petitioners would contend that, having sat over the proposals for six years, in spite of several reminders, the respondents could not take the plea that the school managements had not sent the proposals at all. Petitioners would submit that they had been working without any remuneration for the past six years.

Sri K. Jaganmohan Reddy, leaned Counsel for the petitioner, would submit that the entire recruitment process, culminating in the appointment of the petitioners by respondents 4 to 7 schools, ended by February 1997 itself. Learned Counsel would refer to the proceedings of the 3rd respondent dated 03.04.2002 wherein it stated that respondents 4 to 7 had already been informed, vide proceedings dated 23.03.2001, not to proceed to fill up the vacant teachers posts in their aided schools in agency areas as the 3rd respondent had sought permission of the 2nd respondent to fill up the aided teachers posts in elementary schools in agency areas, and that the orders of the 2nd respondent were awaited. Learned Counsel would contend that since the entire selection process had already been completed in February 1997, more than four years prior to the proceedings of the 3rd respondent dated 23.03.2001, no reliance could be placed by the respondents on the said proceedings to contend that the vacant teachers posts could not be filled up. Learned Counsel would refer to the proceedings dated 23.03.2001 and submit that the said proceedings were issued pursuant to the representation submitted by certain aided elementary schools in March 2001 asking the 3rd

respondent to nominate a departmental member to the staff selection committee to fill up the vacant teachers posts in their institutions. Learned Counsel would submit that the proceedings dated 23.03.2001 has no application whatsoever to respondents 4 to 7 schools in as much as the selection process had been completed much prior thereto. Learned Counsel would refer to the order of this Court, in W.P.No. 6332 of 2003 dated 10.04.2003, wherein this Court took note of the fact that the 3rd petitioner herein was selected and appointed, vide orders dated 15.02.1997, and ever since then the proposal seeking approval was pending with the 3rd respondent. This Court held that the proceedings of the 3rd respondent dated 03.04.2002 was made without application of mind to the facts of the case and that, while dealing with the case of the third petitioner who has been appointed way back in the year 1997, the 3rd respondent has referred to the proceedings dated 28.03.2001 which related to grant of permission for filling up of vacant posts of certain other teachers in other schools. This Court held that, when the 3rd respondent was appointed way back in the year 1997, the question of violating the orders dated 28.03.2001 did not arise. This Court set aside the impugned proceedings, dated 03.04.2002, and remitted the matter to the 3rd respondent for his consideration afresh duly taking into account the relevant factors.

The request of respondents 4 to 7, seeking approval of appointment of the petitioners herein as Secondary grade teachers was rejected by the 3rd respondent, in the impugned proceedings dated 16.06.2003, on the following grounds.

i. While Rule 12(5), of G.O.Ms.NO. 1 dated 01.01.1994,

requires all aided schools to have a nominee of the District educational officer, not below the rank of Deputy educational officer, in the staff selection committee, Respondents 4 to 7 schools did not have a departmental nominee in the staff selection committee constituted to select candidates for appointment as Secondary teachers;

ii. Rule 12(6) requires the school management to follow the rule of reservation. However respondents 4 to 7 school managements did not comply with the rule of women reservation;

iii. Though the school management had not taken any steps, as per G.O.Ms.No.1 dated 01.01.1994, they had requested the 3rd respondent, in response to his letter dated 23.03.2001, after a lapse of six years to approve the appointments made by them contrary to the rules, without informing the 3rd respondent soon after the selections were made though Rule 12(8) requires aided institutions to obtain approval of the competent authority and only thereafter to make appointment to posts.

iv. Since the management did not follow the rules and regulations and the correct selection procedure, as per G.O.Ms.No. 1 dated 01.01.1994, and had appointed teachers as per their wish and will, the department was not responsible for the irregular selection of teachers in these institutions.

Sri K. Jaganmohan Reddy, learned Counsel for the petitioner, would submit that Rule 12(6) which requires all private educational

institutions to conform to the annual rotation roster, in selection of posts, was struck down by a Division Bench of this Court in **Government of A.P. Vs. P.Thirumala Devi**[1] and in as much as the rule of reservation was introduced subsequently, under G.O.Ms.No. 75 dated 23.09.2002, the requirement of following the rule of reservation as prescribed in the said G.O. could not be applied retrospectively to selections made in February 1997 and, as such, even assuming that the rule of reservation had not been complied with, the selection of the petitioners as Secondary grade teachers could not be said to have made in violation of the rules of reservation.

In so far as reservation in favour of women candidates is concerned, learned Counsel would submit that this requirement came into effect pursuant to G.O.Ms. No. 65 dated 15.02.1997 whereas the recruitment process had already commenced by November 1996 itself. Learned Counsel would submit that, even otherwise since no women applicant had appeared for the interview, as respondents 4 to 7 schools were located in interior tribal areas, the question of appointment of women teachers did not arise and the rule of reservation in favour of women could not, therefore, be said to have been violated. Learned Counsel would refer to Section 42 of the A.P. Education Act, which requires the Government to set apart sums of money annually as grant in aid to recognized private institutions, and submit that since grant in aid amounts had already been set apart, as required under Section 42, the official respondents were duty bound to release the said amounts. Learned Counsel would submit that since there is no reservation in single posts and since only one post was sought to

be filled up, failure to provide reservation was not fatal. Learned Counsel would submit that, other than women reservation, even if the roster had been followed, the petitioners would have been entitled to be appointed as teachers in respondents 4 to 7 schools. Learned Counsel would contend that since the petitioners are all working in elementary schools, and children below the age of 14 years have the fundamental right to be provided free education and since there are no other government schools in these tribal areas, the government was constitutionally mandated to provide grant in aid to the elementary schools in which the petitioners were working. Learned Counsel would submit that the petitioners are working without salary eversince 1997, have rendered yeomen service in providing education to tribal children who had limited access to education facilities. Learned Counsel would submit that, despite the interim orders of this Court, the petitioners had not been paid salaries ever since 1997 and that they are on the verge of starvation. Learned Counsel would point out the inconsistent stand taken by the respondent and would submit that none of the objections raised, for granting approval, would stand legal scrutiny.

Learned Government Pleader for School Education, on the other hand, would submit that while a Division Bench of this Court, in W.A.No. 1519 of 1999 dated 03.10.2001, had declared Rule 12(6) of the Rules, in G.O.Ms.No. 1 dated 01.11.1994, as unconstitutional, the operation of the judgment of the Division Bench of this Court was stayed by the Supreme Court in its order dated 16.12.2002. Learned Government Pleader would submit that W.P.No. 20991 of 2002 and 22103 of 2002, filed seeking implementation of the rule of reservation, were disposed of on

08.06.2003 and that the government had reintroduced the rule of reservation in G.O.Ms. No.8 dated 30.01.2003. Learned Government Pleader would point out that the petitioners, being teachers, had no locus to challenge the order of the 3rd respondent refusing to provide grant in aid more so as the school managements had not challenged the impugned orders of the 3rd respondent. Learned Government Pleader would place reliance on the order of the Division Bench of this Court in W.A.No. 2410 of 2005 dated 19.12.2005 in this regard. Learned Government Pleader would submit that while the selections are said to have been made, as early as in February 1997, proposals seeking approval of the 3rd respondent was submitted six years thereafter. He would submit that though Rule 12(8), of G.O.Ms. No. 1 dated 01.01.1994, required the school managements to inform the authority within one month of selection, respondents 4 to 7 had sought approval six years thereafter. Learned Govt. Pleader would submit that though the respondent officials had, vide proceedings dated 29.11.1996, asked the school managements to provide reservation, appointments were made without following the rule of reservation. Learned Government Pleader would refer to Rule 10(32), of the Rules notified in G.O.Ms.No. 1, where under among the conditions governing permission is that the education agency must carry out all instructions issued by the Government and other competent departmental authorities while making appointment of staff etc. Learned Government Pleader would submit that the instructions of the 3rd respondent had not been complied with by respondents 4 to 7 and the 3rd respondent had, therefore, refused to grant approval of the illegal selections made

by respondents 4 to 7. Learned Government Pleader would submit that it was not open to the petitioners, who were teachers in elementary schools, to contend that the fundamental rights of their students to free education had been violated. Learned Government Pleader would submit that the duty cast on the State, to provide free education to children below 14 years, could be achieved by establishing new schools or by shifting students in these tribal villages to nearby schools and that it did not necessitate release of grant in aid to teachers posts in private aided educational institutions, more so as the selections were illegal and contrary to the Statutory Rules.

Before examining the rival contentions, it is necessary to note the statutory rules in this regard. In exercise of the powers conferred under the A.P. Education Act, the Andhra Pradesh Educational institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules 1993, (herein after referred to as the 1993 rules) were made and notified in G.O.Ms.No. 1 dated 01.01.1994. Rule 1(2)(b) defines primary and upper primary schools to mean schools which consist of Classes I to V and classes I to VII respectively. Rule 2(b) defines educational agency to mean the Society/Trust/ Association and the like, which sponsors/manages/runs the schools. Rule 2(e) defines competent authority to mean the authorities specified in Rule 3 and Rule 2(h) defines Tribal area as the locality notified as agency area by the Government. Under Rule 3, the competent authority for according permission/recognition to pre-primary and upper primary schools is the District Educational Officer. Rule 9 deals with recognition and Rule 10 the Conditions governing permission/recognition.

Sub-rule 32 of Rule 10 reads thus:

"That the educational agency shall carry out all the instructions issued by the Government and other competent departmental authorities relating to making of admission of students, appointment of staff and also relating to other academic and administrative affairs, in the interest of academic standards and smooth functioning of the institutions, from time to time."

Rule 11 relates to withdrawal of permission and Rule 12 deals with appointment of staff. Since the issue involved, in the case on hand, relates to appointment of staff, it is necessary to extract Rule 12 in its entirety. Rule 12 reads thus:

12. Appointment of Staff:- (1) The educational agency shall appoint staff as per the staffing pattern prescribed by Government from time to time. All staff shall conform to the qualifications prescribed by Government from time to time.

(2) All the staff teaching as well as non-teaching shall be recruited through Staff Selection Committee to be constituted by the educational agency in accordance with these rules.

[(2A) (i) Before filling-up of the aided teaching posts, the recruiting agency shall necessarily obtain clearance from the District level Surplus Man Power Cell under the control of the District Collector. If there are suitable candidates in the Surplus Man Power Cell of the District they should be absorbed against the said vacancies as per the subject requirements. If there are no suitable candidates available as per the subject requirement, further action to fill the vacancies may be taken by the recruiting agencies and competent authorities as per these rules without any further clearance from the Government in Finance Department subject to fulfillment of all the provisions of the said rule.

All such recruitment clearances will be consolidated on every 1st July and 1st January and be submitted by the Commissioner, School Education to the S.M.P.C. in the Finance Department.

N.B: However the permission from the Surplus Man Power Cell at the District level is not required in case the vacancies in the aided schools are to be filled by promotion of persons working in the feeder categories as per the rules or by recruitment by transfer from other category or service if the rules permit.

(ii) in respect of non-teaching staff, the recruiting agency shall obtain clearance from the District level Surplus Man Power Cell under the control of the District Collector. If there are suitable and eligible candidates available in the said Cell they should be absorbed against the vacancies. If there are no suitable candidates available in the District Level Cell, the recruiting agency shall send particulars to the District Educational Officer and the District Educational Officer shall address the Government in Finance Department directly and obtain clearance before taking action to fill the vacancies].

[Added by G.O.Ms.No.76, Edn.(SE/PS-1) Dept., Dt.2-11-1999, w.e.f. 5-8-

1998]

(3) All the posts shall be advertised in atleast tow Newspapers having large circulation of which one shall be in Telugu.

(4) All educational institution receiving grant-in-aid from Government shall notify vacancies to the Employment Exchange and in addition, advertisements in the Newspapers that they shall also be required to call the candidates sponsored by Employment Exchange for test and interview provided that the persons applying to the post in response to the advertisement in the newspapers should have got registered their name in any Employment Exchange in the State.

(5) Aided Schools shall also be required to have a nominee of the District Educational Officer not below the rank of Deputy Educational Officer in the Staff Selection Committee. The educational agency shall fix the selection process (test/interview) in consultation with the District Educational Officer or his nominee and shall afford the D.E.O's nominee a reasonable opportunity of being present. The selection however, shall not be vitiated only on the ground of the absence of D.E.O's nominee if the educational agency has offered reasonable explanation. The burden of proving this shall lie with the educational agency.

(6) The selection of the posts in all private educational institutions shall conform to the communal rotation roster. However, this shall not apply to minority educational institutions only if they are selecting a candidate belonging to the concerned minority community. Where such a candidate is fitted in a vacancy belonging to S.C./S.T. then the S.C./S.T. vacancy shall be carried forward to the next point.

(7) The procedure in respect of aided schools as indicated in sub-rules (4), (5), and (6) above shall apply whether the selection is for an aided post or an unaided post.

(8) All appointments made either teaching or non-teaching staff by aided or un-aided institutions shall be subject to the approval of the competent authority. For this purpose the educational agency shall inform the competent authority within one month of the selection. The competent authority shall grant approval unless the selection has been in violation of these rules. If the approval is not granted within tow months from the date of receipt of the proposals respect of unaided posts, the approved shall be deemed to have been granted. In order to obviate confusion, it shall be incumbent on the educational agency to remind the competent authority one month after the initial communication, if no approval is received. The burden of proof of having communicated the selection to the competent authority shall lie with the educational agency.

(9) The educational agency shall make the appointments only on the approval as per sub-rule (8) above. [And any appointment made by the Educational agencies in violation of any of the provisions of Rule 12 shall be null and void]

[Added by G.O.Ms.No.76, Edn.(SE/PS-1) Dept., Dt.2-11-1999,w.e.f.5-8-1998]

(10) Nothing in this rule shall prevent an educational agency from making a temporary appointment in a casual vacancy of unaided post provided that such appointment is not for a period exceeding 60 days.

It is necessary to note that Rule 12(9), to the extent that **"any appointment made by the Educational agencies in violation of any of the provisions of Rule 12 shall be null and void"** was inserted by G.O.Ms.No. 76 dated 02.11.1999 with effect from 05.08.1998, subsequent to the petitioners selection in February 1997.

Before examining the contentions urged by Sri K.Jaganmohan Reddy, learned counsel for the petitioner, it is necessary to first consider the objection of the learned Government Pleader that the petitioners herein, teachers in private schools, do not have the *locus standi* to invoke the jurisdiction of this Court under Article 226 of the Constitution of India to seek a direction that grant in aid be released by the government and that salaries be paid to them. Reliance is placed by the learned Government Pleader on **State of Assam Vs. Ajit Kumar Sarma**[2] wherein the Supreme Court held thus:-

"…..The main question which falls for decision in this appeal is whether the High Court is right in issuing a writ of mandamus to the State through the Director directing it not to give effect to the letter of 20/03/1962. It has not been contended on behalf of the appellants that the Rules have statutory force and the arguments before us have been made on the basis that the Rules have no statutory force and are mere executive instructions given by the Government to private colleges as a condition for the implementation of pay scales etc. recommended by the University Grants Commission for private colleges, these scales being apparently higher than those existing from before. It seems to us that the High Court was in error in granting a writ of mandamus against the State through the Director once it found that the Rules had no statutory force and were mere administrative instructions for the purpose of giving grant-in-aid to private colleges. What grant the State should make to private educational institutions and upon what terms are matters for the State to decide. Conditions of these grants may be prescribed by statutory rules; there is however no law to prevent the State from prescribing to conditions of such grants by mere executive instructions which have not the force of statutory rules. In the present case the Rules have been framed in order to give revised grants to private colleges to

enable them to give higher scales of pay etc. to their teachers in accordance with the recommendations of the University Grants Commission. The Rules have been held by the High Court to have no statutory force, and that is not disputed before us. In these circumstances it is clear that the Rules are mere executive instructions conditions on which grants would be made to private colleges to implement the recommendations of the University Grants Commission as to pay scales etc. of teachers of private colleges. **Where such conditions of grant-in-aid are laid down by mere executive instructions, it is open to a private college to accept those instructions or not to accept them. If it decides not to accept the instructions it will naturally not get the grant-in-aid which is contingent on its accepting the conditions contained in the instructions. On the other hand, if the college accepts the conditions contained in the instructions, it receives the grant- in-aid. If however having accepted the instructions containing the conditions and terms, the college does not carry out the instructions, the Government will naturally have the right to withhold the grant-in-aid. That is however a matter between the Government and the private college concerned. Such conditions and instructions as to grant-in-aid confer no right on the teachers of the private colleges and they cannot ask that either a particular instruction or condition should be enforced or should not be enforced**. It is only for the Governing Body of the College to decide whether to carry out any direction contained in mere administrative instructions laying down conditions for grant-in-aid. Further it is open to the Governing Body not to carry out any such instruction which is not based on rules having statutory force, and it will then be naturally open to the State to consider what grant to make. But if the Governing Body chooses to carry out the instruction, it could hardly be said that the instruction was being carried out under any threat. It is certainly not open to a teacher to insist that the Governing Body should not carry out the instruction. **The rules for the purpose of grant-in-aid being - as in this case - merely executive instructions confer no right of any kind on teachers and they cannot apply to the High Court for a mandamus asking for the enforcement or non-enforcement of the rules, even if indirectly there may be some effect on them because of the grant-in-aid being withheld in whole or in part. Such mere administrative instructions even though called rules are only a matter between the Governing Body and the State through the Director and cannot in our opinion form the basis of a petition for writ under Art. 226 by a teacher**….."(emphasis supplied).

It is true that the Supreme Court in **Ajit Kumar Sarma[2]** had held that the grant-in-aid code does not confer any right on teachers and that they cannot apply to the High Court for a mandamus asking for enforcement of grant-in-aid rules. The petitioners are teachers and claim to be taking primary classes for

tribal children. As noticed above primary schools are from classes I to V and upper primary schools are for classes I to VII. Thus primary school teachers would teach students below the age of 14years. In **Y. Sidda Reddy Vs. Government of Andhra Pradesh**[3], the Division Bench of this Court held thus:-

"……**From an examination of the judgments of the Supreme Court, the settled position of law with regard to the grants-in-aid is that the State is bound to render financial assistance only to those private educational institutions where education is imparted to children upto the age of 14 years**. If the State decides to extend some financial assistance to private educational institutions imparting education to children above 14 years, the State has the discretion to decide to what extent such financial assistance would be rendered so long as the State does not discriminate between the private educational institutions falling in the same class. The decision of the State to extend some financial assistance to any educational institution imparting education to children above 14 years does not relieve the management of such private educational institution of its obligations to pay the appropriate salary and other benefits which are either agreed between the management and the employee or imposed upon the management by law.

The principle that no private educational institution or an employee of an educational institution has a legal right to compel financial assistance by the State is recognized by the Supreme Court in Ajit Kumar Sarma's case….. "**What grants the State should make to private educational institutions and upon what terms are matters for the State to decide".** However, we are already noticed that an exception to this principle came to be recognized instate of H.P. Vs. H.P. State Recognised & Aided Schools Managing Committees and others wherein the Supreme Court categorically held that insofar as the educational institutions which impart education to children below 14 yeas of age are concerned, the State owes a constitutional obligation to substantially reimburse the management of such schools.

With reference to educational institutions other than those imparting education to children below 14 years, the State owes no legal obligation to extend financial assistance either partially or wholly. If the State renders such assistance in any particular year that is a policy choice of the State for the particular year and the State in our view cannot be compelled to continue the assistance for ever to an educational institution which had received some assistance……" (emphasis supplied)

In view of the law laid down by the Division Bench in **Y. Sidda Reddy**[3] and since the State is bound to render financial assistance to private educational institutions, where education is

imparted to children upto the age of 14 years, and as the petitioners claim to be primary school teachers which, in effect, means that they teach children below the age of 14 years, I see no reason to non-suit the petitioners herein or to hold that they do not have *locus standi* to file the writ petition. The objection of the learned Government pleader in this regard is rejected.

The main ground for rejecting the petitioner's request, for release of grant in aid, vide proceedings dated 16.06.2003, is that respondents 4 to 7 schools have not followed the rule of reservation. As noted above Rule 12(6), of the Rules notified in G.O.Ms.No.1 dated 01.01.1994, requires selection to posts, in all educational institutions, to conform to the communal rotation roster. It is not in dispute that the rule of reservation has not been complied with by respondents 4 to 7 while selecting the petitioners, as primary schools teachers, in February, 1997. The contention of Sri K. Jaganmohan Reddy, learned counsel for the petitioner, is that since Rule 12(6) has been struck down by the Division Bench of this Court, failure to comply with the said Rule is of no consequence.

The Division Bench of this Court in **P. Thirumala Devi**[1] held thus:-

"…….. The power of reservation of the State emanates only from Articles 15 and 16 of the Constitution. Such power of the State can be exercised only in relation to its own employees. In other words, the reservation policy can be extended in the field of public employment only. Control over the educational institutions in terms of the provisions of the Act can only be exercised, as noticed hereinbefore, for reforming, organising and developing the educational system. The State while exercising its control in relation to the school does not exercise only control over education. For the said purpose, there would be a compelling State interest. The words 'control over the institution' by the State is for the purpose of overseeing its administration. The activities of private school are not State activities but only supplemental activities. In Unni Krishnan Vs. State of A.P.: AIR 1993 SC 2178, it has been held:

"....These educational institutions follow the syllabus prescribed by the Government/University, have the same courses of study, follow the same method of teaching and training. They do not award their own degrees/qualifications. They prepare their students for University/Government examinations, request the University/Government to permit them to appear at the examinations conducted by them and to award the appropriate degrees to them. Clearly and indubitably, the recognized/affiliated private educational institutions, supplement the function performed by the institutions of the State. There is not an independent activity but one closely allied to and supplemental to the activity of the State.

.....Since the recognizing/affliating authority is the 'State', it is under an obligation to impose such conditions as part of it duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition/affliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part-III; its activity is bound to be characterized as unconstitutional and illegal. To reiterate, what applies to the main activity applies equally to supplemental activity. The State cannot claim immunity from the obligations arising from Articles 14 and 15. If so, it cannot confer such immunity upon its affiliates."

Those observations were made in the context of private institutions charging capitation fee for giving admission and Supreme Court evolved a scheme of fee structure to 'eliminate discretion in the management in the matter of admission'.

The reservation policy of the State in the field of public employment having been emanated from Article 16(4) of the Constitution cannot be implemented for the aforementioned purpose by way of incidental power under the Act. It is not in dispute that there are schools which consist of one teacher or two teachers only. In an institution there may be posts which are specialized posts. When there is more than one teacher one of the would be appointed as a headmaster.

The teachers of a private institution, having regard to the scheme and object of the Act cannot come within the purview of doctrine of public employment. Article 16 of the Constitution thus per se cannot be held to be applicable. It is one thing to say that the employee enjoys a status having been holding public office but it is another thing to say that in relation to a section of employees, protection of services had been granted to a class of servants who are under the private management having regard to the nature of their services.....

.....The submission of the learned Advocate General to the effect that having regard to the provisions of sub-rule (2) of Rule 12 read with Rule 13 thereof, as recruitment is to be made through Staff Selection Committee to be constituted by the educational agency the communal roster system can be given effect to, cannot be accepted. As noticed hereinbefore, the Act separately defines 'educational agency' and 'educational institution'. The selection in relation to an educational institution or an educational agency may be made in terms of sub-rule (2) of Rule 12 read with Rule 13 thereof. But sub-rule (6) of rule 12 provides for selection of posts in all private educational institutions only.

It is, therefore, not correct to contend that the purported reservation policy of the State can be implemented in relation to the institutions belonging

to an educational agency. In other words, for the purpose of giving effect to sub-rule (6) of rule 12, all private educational institutions shall be treated as separate units.

Furthermore, the State merely grants aid in terms of Grant-In-Aid Code. However, rule 12(6) would apply both in relation to an aided and unaided institution. The State for the purpose of implementing the reservation policy must have a power therefore. It cannot exercise such power only because it gives grant-in-aid. The reservation theory has no nexus with grant-in-aid by the State. Such a power of the State will also have to be considered having regard to the provisions contained in Article 29 read with clause (1) of Article 30 of the Constitution, in terms whereof any discrimination by the State is prohibited.

Even in terms of sub-rule (6) of Rule 12 a minority educational institution has been exempted from applying this communal rotation roster only in the event they select a candidate belonging to the concerned minority community and where such candidate is fitted in a vacancy belonging to SC/ST such vacancy shall be carried forward to the next point. Such a provision even in relation to a minority institution will, therefore, be violative of Article 30 of the Constitution. In regard to private educational institutions, reservation is an essential legislative function. Such an essential legislative function cannot be delegated to a rule making authority. In Kunj Behari Lal Butail Vs. State of H.P.: (2000) 3 SCC 40, the apex Court held:

> It is well settled that the legislature cannot delegate its essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is functionally called, a power to fill up the details. .....We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to being into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.
>
> For the reasons aforementioned, we are of the opinion that Rule 12(6) is ultra vires and is unconstitutional....."

Since the Division had declared Rule 12(6) as unconstitutional and *ultra vires*, violation of the said rule cannot be made the basis for rejecting approval for the petitioners selection as secondary grade teachers. It is true that the Division Bench judgment in **P. Thirumala Devi**[1] is dated 3.10.2001. It is, however, well settled that declaration of law by the Division Bench would relate back to the date on which the rules were initially made and consequently Rule 12(6), on its being declared ultra vires, must be held never to have formed part of the rules notified in G.O.Ms.No.1

dated 01.01.1994.

In **Bombay Tyres International Limited v. B.P.Talathi**[4], it has been held thus:

"…..when the court interprets a statutory provision, it is not making law which operates from the date of its judgment. The principle as accepted in our jurisprudence is that the court explains or expounds the law and does not bring the law into existence, which is the proper function of the competent legislature. Any exposition of the law made by the court would, therefore, relate back to the date from which the statute became operative…."

Learned Government Pleader would however contend that the operation of the judgment of Division Bench in **P. Thirumala Devi**[1] has been stayed by the Supreme Court. It is necessary to note that while stay of the operation of the judgment, of the Division Bench, would result in the order of the Division Bench not being capable of being implemented, the ratio of the decision continues to remain in force till the order of the Division Bench is finally set aside by the Supreme Court.

In **Govt. of A.P. Vs. N. Rami Reddy**[5], the Division Bench of this Court held thus:-

"……The main question which, thus, arises for consideration is as to whether having regard to the aforementioned interim order of stay passed by the Apex Court on 27.9.2000 in SLP (c) No. 15177 of 2000, the ratio of the judgment has been wiped out or not.

It is now a well settled principle of law that the ratio of a judgment is the reasons assigned in support thereof. While a Court of appeal stays the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof, and thereby the ratio of the decision cannot be said to be wiped off. Further more, a distinction must be borne in mind that the appeal Court may, in a given situation, also suspend the operation of a judgment and staying the operation of the order, in our view, connotes two different situations. In **K. Yella Reddy Vs. Registrar, APAT**, a Division Bench of this Court considered the decision of the Apex Court in **Indira Gandhi Vs. Rajnarain, AIR 1975 SC1590** holding:

"It is admitted by the learned Counsel for the petitioner that the judgment of the Full Bench of this Court has been stayed and the operation of the judgment had been suspended by the Supreme Court. But the argument is advanced placing reliance on

the decision in **K. Venkata Reddy Vs. LAO, 1994(1) ALT 227**, that the effect of suspension of the judgment of the High Court is only that the judgment shall not be implemented but the dicta decided in the judgment remains operative and is binding on the single Judges and Division Benches until the judgment is set aside by the Supreme Court. Though we do not agree with the statement of law and feel the principle to have been very widely stated yet ordinarily the matter to have been placed before a Larger Bench in giving the judgment has not taken into consideration the decision of **Indira Gandhi Vs. Raj Narain, AIR 1975 SC 1590**".

A bare perusal of the aforementioned decision would clearly show that in Indira Gandhi the operation of the judgment and order of the High Court was suspended. In that case, the election of Smt. Indira Gandhi was set aside. The Apex Court suspended the operation of the said Judgment; as a result whereof, the status of the appellant as an elected Member of Parliament and consequently her right to hold the office of the Prime Minister of India stood revived. But, when a question of law is decided, as indicated hereinbefore, its ratio thereof cannot be said to be wiped out only because the operation of the said order is stayed. This aspect of the matter has been considered by a Division Bench of this Court in **K. Venkata Reddy Vs. LAO, 1994(1) ALT 227** holding:

"We are of the view that when a judgment of the High Court is the subject-matter of an appeal and the said judgment is suspended, the only effect of such suspension is that judgment cannot be executed or implemented. But so long as the Full Bench judgment stands, the dicta laid down therein is binding on all Courts including single Judges and Division Benches of this Court. The dicta laid down therein cannot be ignored unless the Court after hearing a particular case doubts the correctness of the dicta and thinks it appropriate that it should be reconsidered. We, however, do not feel any such doubt that insofar as the acquisition of the land of a person, whose holding is less than the ceiling area and is personally cultivating the same, is concerned, he is entitled to the payment of market value in lump sum. Payment of compensation in instalments is violative of the provisions of clause (2) of Article 31-A of the Constitution."

This aspect of the matter is no longer res integra in view of the decision of a Three-Judge Bench of the Apex Court in **M/s. Sree Chamundi Mopeds Ltd. Vs. Church of SIT Association, AIR 1992 SC 1439**, wherein the Apex Court has laid down the law in the following terms:

"The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It is only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of and is still pending. We are, therefore, of the opinion that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 12, 1991 by the Delhi High Court staying the operation of the order of the

Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority".

There cannot be any doubt whatsoever that the decision rendered by a Division Bench of this Court is binding upon another Division Bench. The decision of this Court in Rangaiah, as indicated hereinbefore, has been followed by this Court in many cases……." (emphasis supplied)

Re-introduction of the rule of reservation, in G.O.Ms.No.75 dated 23.09.2002, would only make the rule of reservation applicable from 23.09.2002, the date on which G.O.Ms.No.75 came in to force and not prior thereto. Since the petitioners' selection was in February, 1997, much prior thereto, these selections cannot be said to have been vitiated on the ground that respondents 4 to 7 schools had failed to conform to the communal rotation roster.

The fact, however, remains that even while granting permission, vide proceedings dated 29.11.1996, to make recruitment to vacant secondary grade teacher posts, respondents 4 to 7 schools were informed that they were required to comply with the rule of reservation in favour of women.

Sri K. Jaganmohan Reddy, learned counsel for the petitioner would contend that Rule 22-A which relates to women reservation in appointment to posts, was notified in G.O.Ms.No.65 dated 15.02.1997 subsequent to commencement of the selection process, whereby the petitioners were appointed as secondary grade teachers in February, 1997. It is however required to be noted that reservation for women, to the extent of 33 1/3% in the matter of direct recruitment, was required to be given effect to from 28.5.1996, even prior to 29.11.1996, the date on which competent authority granted permission to respondents 4 to 7 –

schools to commence the process of recruitment. Respondents 4 to 7 were therefore required to comply with reservation in favour of women while filling up the posts of secondary grade teachers in their respective schools.

Sri K. Jaganmohan Reddy, learned counsel for the petitioner, would contend that since only one teacher's post was sought to be filled up in each of the respondent – schools, and as there can be no reservation to single cadre posts, the question of reservation in favour of women does not arise.

In **Dr. Chakradhar Paswan Vs. State of Bihar**[6], the Supreme Court held thus:-

".....It is quite clear after the decision in Devadasans case that no reservation could be made under Art. 16 (4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Arts. 16 (l) and 16 (2) wholly meaningless and illusory. **These principles unmistakably lead us to the conclusion that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Art. 16 (4), pre-supposes the availability of at least more than one post in that cadre**....." (emphasis supplied)

In **P.G. Institute of Medial Education & Research Vs. Faculty Association**[7], the Supreme Court held thus:-

".....**In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent per cent reservation for the backward classes is not permissible within the constitutional framework**. The decisions of this court to this effect over the decades have been consistent.

Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete

reservation and the appointment to such post is kept out of bounds to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.

We, therefore, approve the view taken in Chakradhar case that there cannot be any reservation in a single post cadre and we do not approve the reasonings in Madhav case, Brij Lal Thakur case and Bageshwari Prasad case upholding reservation in a single post cadre either directly or by device of rotation of roster point. Accordingly, the impugned decision in the case of Post Graduate Institute of Medical Education and Research cannot also be sustained. The review petition made in Civil No. 3175 of 1997 in the case of Post Graduate Institute of Medical Education and Research, Chandigarh, is therefore allowed and the judgment dated 2/5/19977 passed in Civil No. 3175 of 1997 is set aside…." (emphasis supplied)

As noted above, it is only in cases where more than one post is available in a cadre, would the rule of reservation apply. The question as to whether there was only one post of teacher, in each of respondents 4 to 7 schools or whether there was more than one post, are matters which are required to be examined by the 3rd respondent.

Sri K. Jaganmohan Reddy, learned counsel for the petitioner, would refer to the counter affidavit filed on behalf of respondents 4 to 7 in support of his contention that despite inviting applications from women candidates, no woman candidate had participated in the selection process in view of the fact that respondents 4 to 7 – schools are located in interior tribal areas. This fact as to whether applications had been received from women candidates, whether call letters were sent to them for participating in the selection process and whether, despite being asked to attend the interview, they had failed to appear, are all matters which the 3rd respondent is required to inquire into.

While the 3rd respondent, in the impugned order dated 16.6.2003, had stated that Rule 12(5), which require the nominee of the District Educational Officer to be part of the Selection Committee, was not complied with and that respondents 4 to 7 – schools had not included the representative of the District Educational Officer as a nominee in the Selection Committee, both the petitioners and respondents 4 to 7 would submit that despite a specific request being made to send his nominee, the 3rd respondent had failed to do so. The question as to whether respondents 4 to 7 had, in fact, requested the 3rd respondent to send his nominee to participate in the selection process and as to whether the 3rd respondent had failed to comply with such a request are also matters which the 3rd respondent is required to examine. Rule 13(1), of the rules notified in G.O.Ms.No. 1 dated 01.01.1994, prescribes the composition of the staff selection committee. Rule 13(3) provides that the quorum for the staff selection committee shall be four. Thus, even in the absence of the nominee of the District Educational Officer, as required under Rule 13(1)(e), there could still be a quorum for the staff selection committee. Further Rule 12(5), while requiring aided schools to have a nominee of the District Educational Officer in the staff selection committee and for the educational agency to fix the selection process in consultation with the District Educational Officer or his nominee and to afford the D.E.O's nominee reasonable opportunity of being present, also provides that the selection shall not be vitiated only on the ground of the absence of the D.E.O's nominee if the Educational agency has offered reasonable explanation. Failure on the part of the 3rd respondent

to depute his nominee to participate in the selection process, despite a specific request by respondents 4 to 7 schools to do so, cannot vitiate the selection process nor can the 3rd respondent take advantage of his own default to contend that Rule 12(5), of the Rules notified under G.O.Ms.No.1 dated 01.01.1994, has been violated. On the question of absence of the nominee of the D.E.O. in the selection process, when respondents 4 to 7 schools selected the petitioners, the 3rd respondent shall, in accordance with Rule 12(5), examine whether respondents 4 to 7 schools have offered a reasonable explanation in this regard.

While the 3rd respondent would state that respondents 4 to 7 schools had not sought approval to make appointments pursuant to the selection and had kept silent for more than six years, respondents 4 to 7, in their counter affidavit, state that they had requested the 3rd respondent to approve the appointments made by them and that the said request had been forwarded to the 3rd respondent through the Mandal Education Officer. Some of these request letters are filed as part of the material papers. The Mandal Education Officer is an officer subordinate to the 3rd respondent and in case respondents 4 to 7 had sought approval of the 3rd respondent, through the Mandal Education Officer, within time, they cannot be said to have violated Rule 12(8) and (9) of the Rules in G.O.Ms.No.1 dated 01.01.1994. It is also necessary to note that since the petitioners' selection was in February, 1997, the amendment to Rule 12(9), whereby the words 'any appointment made by the educational agencies in violation of any of the provisions of Rule 12 shall be null and void' was inserted by G.O.Ms.No.76 dated 02.11.1999 with effect from 05.08.1998,

would not apply and it cannot be said that the appointment of the petitioners as primary school teachers, being contrary to the rules, is null and void.

In **R. Raju Vs. The Regional Joint Director of School Education, Warangal**[8], the Division Bench of this Court held as under:

"…..Having considered the submissions made and on perusal of record, we are of the opinion that Rule 12(9) of the Rules issued under G.O.Ms.No. 1 is very clear and it contemplates that unless and until approval is there, question of valid appointment does not arise and any appointment is subject to the approval. Thus, in the absence of any approval, no right can be conferred to the individuals to make any claim. Merely because, the representative of the Government is present at the time of selection or the fact that there was selection, no enforceable right can be created. In view of the same, we do not find any reasons to differ with the view taken by the learned single Judge……."

While approval of the 3rd respondent, is no doubt essential, as held by the Division Bench of this Court in **R.Raju**[8], the 3rd respondent cannot take advantage of his own delay, in granting approval, to contend that appointment of the petitioners without obtaining approval of the 3rd respondent is illegal and invalid. As already noted above, while the 3rd respondent would contend that applications seeking approval was belatedly submitted six years after the petitioners had been selected and appointed as secondary grade teachers, both the petitioners and respondents 4 to 7 would submit that approval had been sought within time and the request in this regard was made to the 3rd respondent through the Mandal Educational Officer. Whether such a request for grant of approval had been made by respondents 4 to 7 and whether the Mandal Educational Officer had received the applications from

respondents 4 to 7 seeking approval of the 3rd respondent, whether such applications were submitted by respondents 4 to 7 within the time are all matters which are required to be enquired into by the 3rd respondent.

The impugned proceedings dated 16.06.2003 is set aside and the 3rd respondent is directed to examine the matter afresh, in the light of the observations made in this order, after giving an opportunity of being heard to the management of respondents 4 to 7 schools and to the petitioners herein and pass appropriate orders, in accordance with law, within a period of four months from the date of receipt of a copy of this order.

Since the writ petition itself is finally disposed of, I see no reason to entertain the contempt case filed alleging violation of interim orders passed by this Court, pending disposal of W.P.No.27004 of 2003.

W.P.No.27004 of 2003 is disposed of. Contempt case No.1385 of 2005 is dismissed. No costs.

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asp/mrkr

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[1] 2002 Suppl. (1) ALD 91 (DB)

[2] AIR 1965 SC 1196

[3] 2006(1) ALT 354

[4] 1992 LAB.I.C. 258

[5] 2001(1) ALD 443

[6] AIR 1988 SC 959

[7] AIR 1998 SC 1767

[8] Judgment in W.A. No. 2410 of 2005 dated 19.12.2005